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No. 03-1215

SUPREME COURT, U.S.
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Supreme Court of the United States

Christ's Household of Faith,
Petitioner,

vs.

Patricia L. Rooney, et al.
Respondents.

On Petition for Writ of Certiorari to the
Minnesota Supreme Court

BRIEF IN OPPOSITION BY RESPONDENT RAMSEY COUNTY

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QUESTION PRESENTED

The application of a valid and neutral law of general applicability to a church and a church member does not violate the First Amendment free-exercise principle. Minnesota Courts held that Michael Rooney was employed by Christ's Household of Faith (CHOF) and that CHOF could be required to make Rooney's child support payments in his stead. Does the determination that CHOF was an employer and Rooney an employee violate the free exercise clause?

TABLE OF CONTENTS

Table of Authorities ii

Question Presented 1

Opinions Below 2

Jurisdiction 3

Statement of the Case 4

Reasons for Denying the Petition 9

I. No new or unique issue is presented 9
II. Petitioner has waived any Constitutional challenge 13
III. There is no entanglement with doctrine or belief 15

Conclusion 18

TABLE OF AUTHORITIES

CONSTITUTIONAL PROVISION

First Amendment, United States Constitution

FEDERAL STATUTES

Title 28 U.S.C. § 1257 3

STATE STATUTES

Minn. Stat. § 518.551 11

Minn. Stat. § 518.6111 11

FEDERAL DECISIONS

Employment Div. Dept. of Human Resources of Oregon vs. Smith, 494 U.S. 872, 110 S.Ct. 1595, 108 L.Ed.2d 876 (1990) 9

United States v. Lee, 455 U.S. 252, 102 S.Ct. 1051, 71 L.Ed.2d 127 (1982) 9

OPINIONS BELOW

1. In re the Marriage of Patricia L. Rooney, Petitioner, Respondent v. Michael T. Rooney, Lower Court Respondent, Christ's Household of Faith, Inc. Appellant, 478 N.W.2d 545 (Minn. App. 1991). This decision is not reproduced in the Appendix to the Petition for Certiorari.

2. In re the Marriage of Patricia L. Rooney, Petitioner, Respondent, v. Michael T. Rooney, Respondent, and Christ's Household of Faith, third-party Respondent, Appellant, and Ramsey County, Intervenor, Respondent, 669 N.W.2d 362 (Minn. App. 2003), *review denied* Minn. Nov. 25, 2003. This decision is reproduced in the Appendix to the Petition for Certiorari at pages B-1 to B-29.

JURISDICTION

This Court has jurisdiction to review final decisions of the highest-level state court when there is a federal question presented. Title 28 U.S.C.§ 1257. Petitioner claims that the decision of the Minnesota Court of Appeals (and the denial of review by the Minnesota Supreme Court) that Michael Rooney is an employee of and that Christ's Household of Faith is an employer violates their rights to free exercise of religion under the First Amendment to the United States Constitution.

STATEMENT OF THE CASE

This is a child support enforcement case under Minnesota law that involves a man who incidentally is the member of a church. Michael and Patricia Rooney were married in 1964 and lived for most of their marriage as members of Christ's Household of Faith (Petitioner—hereafter CHOF). Rooney v. Rooney, 478 N.W.2d 545, 546 (Minn. App. 1991). (Hereafter Rooney 1991.) The church requires that members give up all their property to the church and relinquish any claim for payment for any services they may provide to the church. Rooney v. Rooney, 669 N.W.2d 362, 366 (Minn. App. 2003), *review denied* Minn. Nov. 25, 2003 (Hereafter Rooney 2003.) Michael Rooney performs services for CHOF. Id. In return for the property and services given to the church, the church provides necessary support to its members. Id.

Patricia Rooney left the church in 1987 with four of the couple's minor children. Id. Their marriage was dissolved in 1988. Id. Patricia Rooney was the

Petitioner in state court in the divorce proceedings and is a Respondent before this Court. Michael Rooney was Respondent in state court and is a named Respondent before this Court. Michael Rooney was ordered to pay child support and spousal maintenance, based on a determination that his earning capacity was $24,000.00 annually. Id. Patricia Rooney applied for and was given public assistance for herself and the children in her custody from Ramsey County. Id. Ramsey County was a Respondent below and is Intervenor, Respondent in this Court. This Brief in Opposition is for Ramsey County.

CHOF is a non-profit corporation but operates a number of businesses, including Northstar Services. Id. Northstar Services sells home remodeling services to the public. Rooney 1991, 546. Michael Rooney worked as a purchasing agent for CHOF, but did not receive cash compensation for his services. Id. CHOF gave him free food, clothing, housing, education, medical care, and automobile use. Id.

Michael Rooney did not receive sufficient cash compensation from CHOF to

meet his child support and spousal maintenance obligations. Rooney 2003, 366. The Minnesota District Court in 1990 determined that CHOF was Rooney's employer under Minnesota law, and ordered CHOF to perform income withholding to pay Rooney's obligations. Id. CHOF's attorney sent a letter to the county stating that CHOF could not comply with all aspects of the order, that CHOF and its related entities were not parties to the proceeding, but did not object to the withholding order. Id. CHOF made some payments on Rooney's behalf. Id. CHOF continues to make child support payments for other members. Id. 369.

In 1991, however, after the Minnesota District Court affirmed an order directing entry of judgment for support and maintenance arrears against CHOF, CHOF appealed to the Minnesota Court of Appeals and won a remand to determine whether CHOF had waived its right to an evidentiary hearing, whether CHOF was an employer under Minnesota law, and what the total amount of CHOF's obligations should be. Id. 366-67.

When the hearing on remand was ultimately held by a child support magistrate in 2002, and after the District Court remanded it to the child support magistrate for a determination of all arrearages, the District Court ruled that CHOF was responsible as an employer and "payor-of-funds" for a total of $100,976.82 in support arrearages and $38,955.00 in spousal maintenance arrearages. Id. 367.

CHOF appealed to the Minnesota Court of Appeals, claiming among other things that the exercise of jurisdiction over CHOF for compliance with a child-support withholding statute violated the First Amendment because it would involve an unconstitutional inquiry into the relationship between the church and its members. Id. The Minnesota Court of Appeals rejected CHOF's claim, holding that the state has a compelling interest in securing child support for children and that the child support and maintenance withholding statute is a neutral law that applies to all Minnesota employers and could be applied without inquiring into religious doctrine or practice. Id. 368, 370, 375.

The Minnesota Supreme Court denied CHOF's petition for further review. CHOF seeks a writ of certiorari to review the decision that the Minnesota Child Support Withholding law may be applied without an excessive entanglement in the affairs of the church.

REASONS FOR DENYING THE PETITION

I. No new or unique issue is presented.

This case does not present any new or unique issues of Constitutional law that would require or benefit from a ruling by this Court. In cases ignored by the Petitioner, this Court has already decided that a "state may justify a limitation on religious liberty by showing that it is essential to accomplish an overriding governmental interest," United States v. Lee, 455 U.S. 252, 257, 102 S.Ct. 1051, 1055, 71 L.Ed.2d 127 (1982), and "that the right of free exercise does not relieve an individual of the obligation to comply with a 'valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).'" Employment Div. Dept. of Human Resources of Oregon v. Smith, 494 U.S. 872, 879, 110 S.Ct. 1595, 1600, 108 L.Ed.2d 876 (1990), *citing* United States v. Lee, supra.

This is a child support enforcement case arising under Minnesota law. Minnesota

has determined that securing child support from Rooney is a compelling governmental interest. Rooney 2003, 370. This case does not involve any dispute between competing religious persons or between a person and the religion. The state is not attempting to inquire into or influence that relationship at all. Nor does this case involve any question of the adequacy of support of children of a family living inside a religious community; the state is not attempting to inquire into or influence how CHOF and its members treat each other or the level of support given members within the church community.

This case involves a dispute between on one side a man who has fathered children and who has chosen to remain a member of a religious community to which he surrenders his property and services and on the other side his former wife and some of their children who are no longer members of the church community. Because the former wife found it necessary to turn to public assistance to provide for necessities for herself and the children in her custody, the state became involved.

Minnesota law allows a county to secure child support payments from an employer when the employee does not make timely payments of court-ordered obligations. Minn. Stat. § 518.6111. A person who is obligated to make support payments and who has the ability to obtain employment and earn a certain level of income may have that level of income imputed to him even if he voluntarily chooses to remain unemployed or if he chooses to remain underemployed or in a position for which he receives no remuneration. Minn. Stat. § 518.551, subd. 5b.

Michael Rooney provides services for CHOF, but does not receive cash compensation from CHOF. Rooney 1991, 546. For some time at least, he worked as a purchasing agent for CHOF in its primary business of selling home remodeling services to the public. Id. The Minnesota trial court imputed income to Rooney of $24,000.00 annually for the services he provided to CHOF, and ordered Rooney to make child support and spousal maintenance payments as if he received cash compensation from CHOF. Id.

Because Michael Rooney did not pay his court-ordered child support and spousal maintenance payments, CHOF was ordered to withhold Rooney's income and make the payments in his stead. Id.

The application of the Minnesota income withholding law did not require any inquiry into the religious practices of Michael Rooney or CHOF, but was based on neutral factors applicable to all Minnesota employees and employers. The state courts determined that Michael Rooney has the ability to earn a certain level of income by performing certain services. The courts imputed a certain level of income to him for his ability to perform such services.

Michael Rooney performed the services for CHOF in its remodeling business. It may be concluded that if Rooney or another member of CHOF was not able to perform the services and if CHOF was required to purchase the services on the open market, then they would have had to pay the amount that was imputed to Michael Rooney as his income.

Minnesota courts did not inquire into the religious beliefs or practices of Michael Rooney or of CHOF. Their relationship was evaluated objectively by looking at how they should be compared to other persons and organizations doing similar things. Minnesota's child support enforcement law is a valid law of general applicability that has been applied in a neutral manner to a church and a church member. This case does not present any new or unique Constitutional principle upon which this Court should rule.

II. Petitioner has waived any Constitutional challenge.

This Court should not grant the petition for a writ of certiorari because Petitioner has waived its right to claim that the Minnesota child support enforcement law involves an unconstitutional entanglement between the state and their religion.

Michael Rooney was ordered to pay child support and spousal maintenance in 1988. He made some payments but soon was in arrears. CHOF was determined to be Michael Rooney's employer and was ordered

to institute income withholding and to pay Rooney's obligations. Rooney 1991, 546.

CHOF complied in part with the withholding order by paying the amount of money that they deemed was appropriate to the value they placed on Rooney's services rather than the value imputed to his services by the state. Id.

CHOF has made many payments on Rooney's behalf, and continues to make child support payments for other church members. Rooney 2003, 369. CHOF does not claim that those payments are a burden on its right to free exercise. Id.

CHOF has waived any right to challenge the constitutionality of Minnesota's child support enforcement law by making payments on behalf of Rooney and other church members. CHOF does not claim that they should not make payments. Their claim is that they, rather than the state, should be allowed to decide the amount of the payments. This case does not present a Constitutional challenge, but an

implementation challenge under Minnesota law.

III. There is no entanglement with doctrine or belief.

CHOF claims that the exercise of jurisdiction by the state over their organization and their member Michael Rooney to enforce child support obligations involves excessive entanglement with their religious affairs. But CHOF is confusing the question of how the religion labels the relationship between itself and its members with the question of how that member and the church will be labeled by the state when determining the relationship of the church and its members with persons who are not members of the church.

CHOF is free to label its relationship with Michael Rooney in any manner it sees fit. The state does not seek to alter or influence that relationship or that labeling in any manner.

But CHOF deals with the public and with persons who are not, or are no longer, members of the religious community. It is

that sort of relationship with which the state must deal. Michael Rooney has not provided the level of support for his children and his former spouse that the Minnesota courts found was appropriate. Minnesota law was applied to determine that Michael Rooney was capable of earning a certain amount of income if he worked on the open market, and that level of income was imputed to him.

CHOF looks like a business that provides, among other things, remodeling services to the general public. There is no allegation that CHOF donates its services or presents itself in any aspect other than a profit-making company.

Michael Rooney provides services for CHOF that could be provided for any other business. If Michael Rooney provided such services for any other company he would be compensated for his services. Neither CHOF nor Michael Rooney makes any allegation that the services he provides to CHOF are not valuable. They do not even claim that the value imputed to his services would be different if provided to another business.

This case is similar to the old saying: if it walks like a duck, and quacks like a duck, then it's a duck. Here, though, the ducks do not want to be called ducks. But Michael Rooney provides services for CHOF and under any objective standard is their employee, whether or not they want to label him an employee. CHOF, likewise, is conducting business in the open market and under any objective standard is Rooney's employer, whether or not they want to be labeled an employer. They provide Michael Rooney with food, clothing, and shelter.

No inquiry is necessary into the religious practices of CHOF and Michael Rooney. Why Michael Rooney does what he does for CHOF, and what value CHOF and Rooney place on those acts is irrelevant to any determination of how such services would be valued on the open market. Their religious beliefs are irrelevant to setting the amount of his support obligations.

CONCLUSION

This Court should deny the petition for a writ of certiorari. This case does not present any new or unique issue of Constitutional or federal law that would benefit from a ruling by this Court. This case does not concern any involvement of the state with the religious practices of Michael Rooney or CHOF. This case merely presents a question of the implementation of Minnesota's child support enforcement law to a situation that happens to involve a man who is employed by a church.

Dated: 26 Mar. '04 Respectfully submitted;

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